

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
ILLINOIS EASTERN DIVISION**

) ) Master Docket Case No. 19-cv-01717  
In re: WATTS COORDINATED )  
PRETRIAL PROCEEDINGS ) Judge Franklin U. Valderrama  
 )  
 ) Magistrate Judge Sheila M. Finnegan  
 )

THIS DOCUMENT RELATES TO CASE NO. 16-CV-8940

**PLAINTIFFS' MOTION TO BAR TESTIMONY OF KEVIN HUGHES**

## INTRODUCTION

Defendants have disclosed former Cook County Assistant State's Attorney Kevin Hughes as an expert witness.

Mr. Hughes's report discusses: (1) Operation Sin City, which was an investigation into drug sales at the Ida B. Wells housing complex in the early 2000s; (2) various investigative techniques used in investigations such as Sin City; and (3) the police reports documenting the arrests of Ben Baker and Clarissa Glenn. Ex. 1 (Hughes Report) at 2-5. He should be barred from testifying about any of those topics. During his deposition, Mr. Hughes indicated that he did not plan to testify about the two topics during the trial in this case. Ex. 2 (Hughes Dep.) at 38:20-41:10 (confirming that he only planned to testify about the written reports of Ben Baker and Clarissa Glenn's arrests). That was an appropriate concession. Testimony about Sin City and investigative techniques used in other cases like Sin City would not be proper in this case because, among other reasons discussed below, they had nothing to do with the arrests at issue in this case. Nor should Hughes be permitted to testify about the police reports of Mr. Baker and Ms. Glenn's arrests because he is not familiar with, and therefore does not address, the relevant professional standards governing police reports.

## LEGAL STANDARD

“[A]ll witnesses who are to give expert testimony under the Federal Rules of Evidence must be disclosed under Rule 26(a)(2)(A).” *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 756 (7th Cir. 2004). Federal Rules of Evidence 702 and 703 govern the admissibility of expert witness testimony. Fed. R. Evid. 702. Opinion testimony is admissible only if the expert’s “specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue,” and then only if the testimony is “based on sufficient facts or data” and “the product of reliable principles and methods,” which the expert has “reliably applied.” Fed. R. Evid. 702. The expert’s opinion must be based on “knowledge,” not merely “subjective belief or unsupported speculation.” *Daubert*, 509 U.S. at 590; *Brown v. Burlington N. Santa Fe Ry. Co.*, 765 F.3d 765, 772 (7th Cir. 2014). Among other things, “an expert report must contain ... ‘the facts or data considered by the witness in forming’” the expert’s opinions. *Levy v. Marion County Sheriff*, No. 1:17-cv-03090-JMS-TAB, 2019 WL 535706, at \* 3 (S.D. Ind. Feb. 11, 2019) (quoting Fed. R. Civ. P. 26(a)(2)(B)(ii)).

The trial judge occupies a “gatekeeping role” and must scrutinize proffered expert testimony to ensure it satisfies each requirement of Rule 702. *Daubert*, 509 U.S. at 592-93, 597. Part of the Court’s gatekeeping role is to ensure that opinions are based on reliable science. *See, e.g., Harris v. City of Chicago*, 14 C 4391, 2017 WL 3142755, at \*5 (N.D. Ill. July 25, 2017) (decision of whether an expert’s opinion is based on reliable science is “a legal conclusion for the Court’s resolution pursuant to *Daubert* and Rule 702”). By contrast, it is not proper for an expert to testify that another expert’s opinion is not based on reliable science. *Id.*

The proponent of the expert evidence bears the burden of establishing, by a preponderance of the evidence, that the requirements set forth in Rule 702 and *Daubert* have been satisfied. *Lewis*

v. CITGO Petroleum Corp., 561 F.3d 698, 705 (7th Cir. 2009). This rule applies not only to scientific testimony but to all expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). A *Daubert* inquiry ultimately requires a two-step analysis: first, a determination of the expert's reliability, and second, whether the proposed expert testimony is relevant and aids the trier-of-fact. *Cummins v. Lyle Industries*, 93 F.2d 362, 367-68 (7th Cir. 1996). A trial court should exclude expert testimony that is not pertinent to a disputed issue in the case even if the methodology underlying the testimony is sound. *Smith v. Ford Motor Co.*, 215 F.3d 713, 719 (7th Cir. 2000).

## ARGUMENT

### I. **Mr. Hughes testified that he has disclosed no opinions in this case, so he should not be permitted to offer any.**

The defense produced a report from Mr. Hughes that discussed a number of topics. Ex. 1 (Hughes Report). During his deposition, however, Mr. Hughes testified that he had not disclosed any opinions. Ex. 2 (Hughes Dep.) at 18:23-20:7 (acknowledging that there are a number of *Watts* related cases, stating that he has never been disclosed as an expert, and answering “no” when asked if he had disclosed any opinions in any of those cases).

A careful review of his report shows that his testimony on that issue is correct. For example, a fair amount of his report discusses the Sin City investigation, but it does not express any opinions about that investigation, let alone try to tie any such opinion to this case. The same goes for his discussion of investigative techniques used in investigations that are similar to Sin City. He discusses some techniques that he learned about from talking to police officers, but his report does not disclose opinions about those techniques, such as they whether they comply with generally accepted standards. Nor does he explain how those techniques are relevant to this case.

To the contrary, as discussed below, he acknowledges that Sin City and investigative techniques used in investigations similar to Sin City are not relevant here.

**II. If the Court ignores Hughes's concession that he offered no opinions, his testimony about Sin City and other investigations should still be barred.**

Mr. Hughes should be barred from opining on Sin City or other similar investigations.

Mr. Hughes remembers nothing about Sin City and admits that the investigation is related to this case only by geography, at most. Mr. Hughes's report also discusses various investigative techniques used during narcotics investigations that have nothing to do with Mr. Baker and Ms. Glenn's arrests or this case. Mr. Hughes acknowledges that these topics are not related to Mr. Baker and Ms. Glenn's arrests, and he in fact disavowed any intention of testifying on those topics at trial. The Court should take him up on the appropriate concession that he would not attempt to testify about these topics because they are not relevant and are not adequately disclosed opinions regardless.

**A. The Court should bar Hughes from opining about Sin City.**

Mr. Hughes's report describes Sin City as a long-term investigation into narcotics sales at Ida B. Wells, which he worked on as a prosecutor, and which "resulted in the arrest and prosecution of dozens of individuals for crimes ranging from possession of narcotics up to Criminal Drug Conspiracy." Ex. 1 (Hughes Report) at 2. Hughes further states that Sin City determined that drug sales were occurring at Ida B. Wells "essentially as a 24/7 operation," and he describes details about how drugs were brought into Ida B. Wells and packaged for sale. Ex. 1 (Hughes Report) at 3. He also states that Operation Sin City identified Ben Baker and another plaintiff in the Watts cases named Elgen Moore as a "Building Manager" for the drug operation at one of the buildings at Ida B. Wells. Ex. 1 (Hughes Report) at 3. The Court should bar Hughes's testimony about Sin City in its entirety. Mr. Hughes failed to identify the data he relied

on to provide this report or provide any foundation for the testimony, and it is irrelevant and prejudicial in any event.

### **1. Testimony about Sin City would be irrelevant and unduly prejudicial**

Hughes acknowledged that neither Ben Baker nor Clarissa Glenn were arrested or charged as a result of the Sin City investigation, and he acknowledged that he did not see evidence of criminal activity by Ben Baker in the unidentified Sin City documents he reviewed. Ex. 2 (Hughes Dep.) at 141:12-142:23.<sup>1</sup> He was unable to identify any reason why that investigation might be relevant other than the fact it was conducted in the same general geographic location where Mr. Baker and Ms. Glenn were arrested. Ex. 2 (Hughes Dep.) at 21:3:21:9; *id.* at 27:20-27:23 (in response to further questions about relation between Sin City and this civil case, Hughes testifying that: “I’m merely speculating as to why Ben Baker’s case, but it – I know that it all occurred in the same location, so I’m speculating that it was a geographic thing.”); *id.* at 29:10-29:15. Needless to say, experts are not permitted to offer irrelevant testimony. *Lyle Industries*, 93 F.2d 362 at 367-68.

At one point in his report, Hughes states that Ben Baker was identified as a “Building Manager” of one of the drug operations at Ida B. Wells during the Sin City Operation. But Hughes also acknowledged that Sin City did not produce sufficient evidence to charge Baker with a crime. Evidence of prior arrests that do not result in a conviction are routinely excluded in federal civil rights trials. *See, e.g., Dyson v. Szarzynski*, 2014 WL 7205591, at \*6 (N.D. Ill. Dec. 18, 2014) (excluding prior arrests because “the risk of unfair prejudice to [the plaintiff] is considerable if prior arrest evidence is admitted without the door being opened first”); *Mowrey v. City of Fort Wayne*, 2013 WL 6512664, at \*2 (N.D. Ind. Dec. 12, 2013) (“Prior arrests that did

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<sup>1</sup> No one has ever suggested that Clarissa Glenn was investigated as part of Sin City or any other investigation. Her only arrest is the one at issue in this case.

not lead to a conviction are usually inadmissible under Rule 403’s balancing test and Rule 404(b)’s bar against character evidence.”); *Gregory v. Oliver*, Case No. 00 C 5984, 2003 WL 1860270, at \*1 (N.D. Ill. Apr. 9, 2003) (“Arrests that have not led to convictions are classic candidates for exclusion under [FRE] 404(b)”). Here, Defendants wish to go even further, introducing alleged *uncharged* conduct through a witness who cannot even explain where he learned about the alleged conduct and who admits that the issue has nothing to do with this case.

Testimony about Sin City will introduce to the jury the idea that Ida B. Wells was a dangerous place filled with dangerous individuals, including Ben Baker, rather than serving any legitimate purpose. The Court should bar this testimony.

**2. Hughes failed to identify the data he relied on, and failed to establish any foundation for his proposed testimony about Sin City**

The Court also should bar this opinion because Hughes failed to identify the data used to support it. Mr. Hughes’s report would suggest that he gained this knowledge through his experience working on the Sin City investigation and by reviewing hundreds of documents provided to him by defense counsel. *See id.* at 1. In fact, his report expressly states that the “list of materials reviewed is being provided as a Dropbox link.” *Id.* At his deposition, however, Mr. Hughes clarified that he was unable to open the vast majority of the hundreds of documents that he was sent, and that the reference to him reviewing the documents provided by Dropbox link was not accurate. Ex. 2 (Hughes Dep.) at 45:23-46:9. When asked to identify any documents relating to Sin City that he actually did review, Hughes was unable to identify any. Ex. 2 (Hughes Dep.) at 30:9-34:4 (reviewing list of documents provided to Hughes, with witness unable to identify any Sin City documents he reviewed); *id.* at 46:10-46:15. Hughes’s failure to identify the documents that he relied on for his opinions about Sin City meant that Plaintiffs could not cross-examine him about those documents. That was particularly prejudicial in this

case and warrants excluding his testimony because, as described in the next paragraph, Hughes also testified that he had essentially no memory of the Sin City operation. *See, e.g., Levy, 2019 WL 535706, at \* 2-3* (excluding expert who failed to identify data she relied on before deposition).

Beyond failing to identify what data he relied on for his report about the Sin City investigation, Hughes also acknowledged that he did not have an independent recollection of that investigation other than knowing it was a narcotics investigation that led to a number of arrests and convictions. Ex. 2 (Hughes Dep.) at 14:21-15:6. He did not remember whether Watts or any of the other Defendants participated in the Sin City investigation. Ex. 2 (Hughes Dep.) at 159:17-160:7. In fact, he did not remember the names of even a single police officers involved in that investigation. *Id.* at 160:5-160:7; *see also id.* at 165:18-168:11 (Hughes unable to explain what anyone who was purportedly involved in Sin City did during that investigation or even confirm that they worked on the investigation); *id.* at 175:3-176:10 (reviewing defense disclosure of witnesses with knowledge of Sin City and being unable to identify what role, if any, even a single one of those witnesses had to do with Sin City). Nor could he identify any of the targets of the investigation even when shown the written summary of the Sin City investigation that the Chicago Police Department prepared and that listed the targets. Ex. 2 (Hughes Dep.) at 162:15-164:5.

It is clear from his deposition that Hughes has no independent recollection of the Sin City investigation. The only possible basis for him to opine on that investigation would be based on a review of records. Having not disclosed what records, if any, his opinions are based on, he deprived Plaintiffs from cross-examining him about his opinions. Thus, the Court should bar his testimony.

**B. Hughes should not be permitted to testify about investigative techniques commonly used in narcotics operations.**

Multiple paragraphs of Hughes's report are dedicated to discussing techniques that police officers commonly use while conducting narcotics investigations. Ex. 1 (Hughes Report) at 2-5 (discussing various techniques used by tactical teams and other officers). Hughes admitted that these techniques are used during long-term investigations, and that Baker and Glenn's arrests fall into a different category. *See* Ex. 2 (Hughes Dep.) at 143:6-145:25.

Even if discussion of these techniques was relevant, Hughes's testimony would not aid the jury. During his deposition, Hughes testified that he was familiar with these techniques from talking to police officers over the years he worked as a prosecutor. Ex. 2 (Hughes Dep.) at 143:6-143:23. Presumably the Defendants will testify about the techniques they used when they arrested Baker and Glenn. It is difficult to understand how it would help the jury to have another witness come to Court and say that over the years he heard that other police officers used similar techniques. Perhaps the Defendants wanted an expert to say that these techniques complied with generally accepted standards for policing, which might have been admissible because "expert testimony regarding sound professional standards governing a defendant's actions can be relevant and helpful." *Jimenez v. City of Chicago*, 732 F.3d 710, 721 (7th Cir. 2013). But Hughes is not qualified to do opine on sound professional standards for police officers and did not do that in any event. Rather, he simply says that police officers told him over the years that they did certain things. Hughes neither identifies what standards should apply to narcotics investigations nor applies them to the case at hand. This provides another basis to exclude his opinions.

*Andersen v. City of Chicago*, 454 F. Supp. 3d 740, 745 (N.D. Ill. 2020) (excluding police practices expert who failed to identify relevant professional standards or apply those standards to case).

**III. Hughes should be barred from testifying about the police reports document Baker and Glenn's arrests.**

Hughes seeks to testify that the police reports documenting Baker and Glenn's arrests contained the type of information that prosecutors in his office would expect. Ex. 1 (Hughes Report) at 5. As noted above, expert testimony discussing professional standards about police practices can be helpful to the jury in civil rights cases. Indeed, Plaintiffs retained Dr. Jon Shane to offer that type of opinion in this case. But Hughes's report falls short in this regard because he does not identify the relevant standards or apply those standards to Defendants' reports. Indeed, he admits that he is not familiar with the Chicago Police Department's rules and regulations, and he also admits that he is not aware of any generally accepted standards for producing police reports. Ex. 2 (Hughes Dep.) at 181:10-182:6. Just like the expert in *Andersen*, Hughes's failure to identify the relevant standards or apply them to the case warrants excluding his testimony.

**CONCLUSION**

For the reasons stated above, the Court should bar Kevin Hughes from testifying in this case.

Respectfully submitted,

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